

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Dennis S. LEE et al.

Serial Number: 10/076,367

Filed: February 19, 2002



Confirmation No.: 1505

Art Unit: 2616

Examiner: Donald L. Mills

Atty. Docket No.: 058268.00132

For: METHOD AND APPARATUS FOR FLEXIBLE FRAME PROCESSING AND CLASSIFICATION ENGINE

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

April 28, 2008

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 1-5, 19-28, 42-47, 61, and 75-78 in the above identified application. Claims 1-5, 19-28, 42-47, 61, and 75-78 were finally rejected in the Office Action dated December 27, 2007. Applicants filed a Response to the Final Office Action on February 27, 2008, and the Office issued an Advisory Action dated April 4, 2008 maintaining the final rejections of claims 1-5, 19-28, 42-47, 61, and 75-78. The Office Action also included objections, over which the Board of Appeals would have ancillary jurisdiction. Applicants hereby appeal these rejections and objections and submit this Pre-Appeal Brief Request for Review. Since the objections and rejections are clearly in error, it is respectfully requested that they be withdrawn.

Claims 61-74 and 76-77 were objected to on the grounds that they "merely recite a number of structures capable of performing a respective function" without reciting the execution of such a function. However, it is to be noted that in the apparatus claims such

as those identified, it would not seem to be appropriate to discuss performing the functions, since that would seem to convert the apparatus claim into a method claim, or potentially confuse the reader regarding whether an apparatus (defined by structures capable of performing various functions) or a method (defined by functions being performed) is being claimed. As the claims stand, the claims are definite and avoid that potential ambiguity. Accordingly, Applicants respectfully submit that the objection to claims 61-74 and 76-77 is clearly erroneous and request that it be withdrawn.

Claims 1-5, 19-28, 42-47, 61, and 75-78 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,775 of Coss et al. ("Coss"). Applicants respectfully traverse this rejection as being clearly erroneous.

Coss generally relates to methods and an apparatus for a computer network firewall with dynamic rule processing with the ability to dynamically alter the operations of rules. Coss provides, as illustrated at Figure 8 thereof, a rules table that includes a list of rules, each of which has a corresponding action associated therewith. In addition, each rule can have a "hit count" associated with rule.

Claims 1 and 24 each recite, in part, "each rule of said rules specifies a set of actions." Coss fails to disclose or suggest at least this feature of claims 1 and 24. As can be seen clearly from Figures 3 and 8 of Coss, each of the rules is associated with a single action, not a set of actions. Figure 3 and column 4, lines 31-34 were cited by the Office Action with respect to this feature, but neither portion of Coss discloses more than a single action per rule. Thus, Coss fails to anticipate claims 1 and 24, because Coss fails to disclose or suggest all of the features of claims 1 and 24.

Furthermore, it would not have been obvious to modify Coss such that its rules specify a set of actions. Coss is directed to a firewall that either drops or passes packets. It would not make sense for Coss to have a rule that specifies more than one of those two actions, because those two actions are mutually exclusive. Thus, one of ordinary skill in the art would not have found motivation or suggestion to modify Coss, even if it could be shown that other rules lists existed in which a set of actions were provided corresponding to each rule (not demonstrated in the Office Action, and not admitted). Accordingly,

Coss also cannot possibly render the subject matter of claims 1 and 24 obvious. Thus, it is respectfully requested that the rejection of claims 1 and 24 be withdrawn.

In the “Response to Arguments” section, the Office Action asserted, as best understood, that “pass,” “drop,” or “proxy,” is the set of actions that corresponds to the claimed set of actions. Applicants respectfully submit that the alleged correspondence creates a fundamental inconsistency in the rejection.

Coss clearly indicates that any given rule is only associated with one of the actions from the set identified by the Office Action. Thus, although Coss may disclose the concept of a “set of actions” (not admitted), Coss does not disclose that “each rule of said rules specifies a set of actions,” as recited in claims 1 and 24 (emphasis added). Instead, in Coss, each rule would specify only a single action from the set of actions identified by the Office Action. A single action is not a set of actions. Therefore, Coss’ disclosure cannot correspond to what is recited in the claims. Accordingly, it is respectfully requested that the rejection of claims 1 and 24 be withdrawn.

Additionally, claims 1 and 24 each recite, in part, “wherein each rule field of said rules includes a mask and a selection flag used [for] comparing said portion with each rule.” Coss also fails to disclose or suggest at least this feature of claims 1 and 24.

The Office Action cited column 7, lines 29-61, as allegedly corresponding to this feature. The cited passage of Coss discusses a “dependency mask” with reference to Figures 7 and 8 of Coss. The cited passage also mentions that a “hit count” field is used. As explained in Coss, “ ‘Hit count’ indicates the number of matches which must be found in the cache for the specified action to be taken.” These teachings do not correspond to what is claimed.

As noted above, the claimed “selection flag” is “used [for] comparing said portion with each rule,” as recited in claims 1 and 24. The “hit count” of Coss is not used for comparing a portion of a packet with a rule. Instead, “hit count” in Coss is used to compare the rule to the contents of the cache. Thus, for example, as Coss indicates: “in the dependency mask named “realaudio,” a count of 1 is used for passing UDP packets provided one requisite TCP session is active [and in] the dependency mask “telnet,” a

count of 10 is used to drop packets to prevent overloading resources.” Accordingly, “hit count” of Coss cannot correspond to the claimed “selection flag” because the “hit count” of Coss is used in comparing a rule to a cache, not in comparing a portion of a packet to a rule. Thus, for this additional reason, Coss fails to anticipate claims 1 and 24.

Furthermore it would not have been obvious to modify “hit count” of Coss to be used in comparing the rule to the portion of the packet. The very concept of “hit count” requires reference to historical data (to the extent any comparison is to be made). Thus, a “hit count” of one requires no comparison at all, but a “hit count” of ten absolutely requires comparison to historical data, which will be data outside the portion of the packet. One of ordinary skill in the art consequently would not have been motivated to modify Coss’ “hit count” to be “used [for] comparing said portion with each rule,” as recited in claims 1 and 24. Accordingly, Coss also cannot possibly render the subject matter of claims 1 and 24 obvious. Thus, it is respectfully requested that the rejection of claims 1 and 24 be withdrawn.

In the response to arguments section, the Office Action presented some statements that indicated disagreement with the distinction noted above. The Office Action, however, fails to raise any plausible interpretation in which the “hit count” of Coss would be used in comparing the rule to the portion of the packet. Instead, the Office Action made comments about general principles of interpretation and stated that the “hit count” is used “to indicate the number of matches which must be found in the cache for the specified action to be taken,” and then placed the claim limitation in parenthesis following this description. Applicants respectfully submit that the Office Action’s own characterization of the utilization of the “hit count” demonstrates that the “hit count” is not “used [for] comparing said portion with each rule,” as recited in claims 1 and 24, and consequently does not correspond to what is recited in the claims.

Applicants recognize that the claims must be interpreted as broadly as reasonably possible, but Applicants respectfully submit that nevertheless every recitation of the claim must be considered in light of the understanding of one of ordinary skill in the art, reading the claim in light of the specification (including the context of the claim itself).

Thus, Applicants respectfully submit that because “to indicate the number of matches which must be found in the cache for the specified action to be taken” (Office Action’s description of the function of “hit count”) is not equivalent to “used [for] comparing said portion with each rule” (as recited in claims 1 and 24) as that phrase would be understood by one of ordinary skill in the art, reading the claim in light of the specification, even under the broadest reasonable interpretation, therefore, it is respectfully requested that the rejection of claims 1 and 24 be withdrawn.

The other rejections are clearly erroneous for at least the same reasons. Thus, for the reasons set forth above, it is respectfully submitted that each of claims 1-5, 19-28, 42-47, 61, and 75-78 recites subject matter that is neither disclosed nor suggested in the cited art. It is, therefore, respectfully requested that all of claims 1-5, 19-28, 42-47, 61, and 75-78 be allowed, and that this application be passed to issuance.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosures: PTO/SB/33 Form; Notice of Appeal; Petition for Extension of Time; and  
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